THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; restaurant and premises; rental evidence; comparable assessments; appeal dismissed.

RE: Kentucky Fried Chicken, 25 Turnells Mill Lane, Wellingborough NN8 2RN

APPEAL NUMBER: CHG100336910

BETWEEN:	Alderforce Ltd	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Mr K Everett (Senior Member)
Miss S Ballentine

CLERK: Mrs H Beresford

REMOTE HEARING ON: 20 September 2022

APPEARANCES: Mr R Haywood of Jones Lang LaSalle Ltd (JLL) (Appellant's representative)
Ms V Lynch (for the Valuation Officer)

Summary of decision

1. The appeal was dismissed, the assessment was confirmed at rateable value (RV) £82,500 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Kentucky Fried Chicken, 25 Turnells Mill Lane, Wellingborough NN8 2RN (the 'appeal property'), which was entered in the 2017 rating list as 'restaurant and premises' at rateable value (RV) £96,500, effective from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, JLL made an appeal to the Valuation Tribunal for England (VTE) on behalf of the appellant. The appeal was made because the Valuation Officer decided not to alter the 2017 rating list following the appellant's check and challenge. The appellant had sought a reduction to RV £72,000 with effect from 1 April 2017.

4. The appeal to the VTE was made on the grounds that the valuation for the appeal property was not reasonable, as the assessment had not been altered in the manner sought in the proposal.

5. The appeal property is a drive through restaurant and premises, trading as KFC. It is situated just off A45, A509 and B573, it comprises of a total area of 271.63m^2, most of which 252.24m^2 is on ground floor level and small first floor accommodation of 19.39m^2. It benefits from an adjacent car parking area and is fully heated and air-conditioned. The property is easily accessible by foot, car or public transport.

6. The appellant's representative, when appearing as expert witness, stated that he was on a conditional fee arrangement. However, he also stated that he understood and accepted that his first duty was to the VTE in giving his evidence, whether or not the evidence supported his client's case.

7. The panel has accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and is allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the tribunal can admit evidence whether or not it would be admissible in a civil trial).

8. It was therefore appropriate for the panel hearing the evidence to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

9. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel when coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

10. The base level of value adopted for the appeal property was not agreed. The Valuation Officer has adopted £315.00/m^2 in respect of the appeal property in the challenge decision notice, but the appellant sought a reduction to £290.00/m^2.

Evidence and submissions

11. The bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice; rental evidence summaries; appellant's challenge submission; photographs and location plans of the appeal property; and comparable assessments.

12. Mr Haywood contended that the rent on the subject property had been set at £90,000 in 2009 and was a twenty year lease; at a rent review in 2014 there had been a nil increase. The Valuation Officer had reduced the main space price to £315/m^2 at the challenge stage. Mr Haywood argued that this should be further reduced to £290/m^2 based on nearby rental evidence. In particular, he referred to a McDonalds restaurant situated 0.7 mile from the appeal property, at 45 London Road, Wellingborough which Mr Haywood argued was a better location than where the appeal property stood. This property had a rent of £107,000 which was set in February 2016 which devalued to £297/m^2, and Mr Haywood submitted that it supported a reduction to £290/m^2 for the subject property.

13. Mrs Lynch argued that a higher main space price had been set for 45 London Road, 10% should be included for fit out, there was a service charge of £1,544 and as the property measured over 374m^2 there was an allowance of 6.47% for quantum, she had analysed the rent to £306.60/m^2. She also argued that the appeal property was in a superior position to all of the comparable properties being highly visible and situated just off the A45, A509 and B573, where any
traffic approaching Tesco Superstore had to cross the carriageway adjoining the property. She submitted that the appeal property is located alongside other business accommodation, within close proximity are Halfords, B&M Home Store, Lok'nStore and Topps Tiles.

14. Mrs Lynch contended that the appeal property is smaller than the comparable properties: it comprises a total of 271.63m^2, most of which 252.24m^2 is on ground floor level and small first floor accommodation of 19.39m^2. Mrs Lynch stated that the property had been reduced to £315/m^2 at the challenge stage in line with comparable properties that she had referred to in her challenge decision notice. Mrs Lynch asked the panel to confirm an RV for the appeal property at £82,500.

Decision and reasons

15. The panel had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

16. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –
>
> a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
>
> b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above"

17. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

18. The panel noted that there was rental evidence for the subject property, and it was aware that the agreement of £90,000 per annum had been reached at a rent review in 2014 prior to the AVD in April 2015. This devalued to £371.09/m^2 which accounted for 10% for fitout. The panel was satisfied that the rent passing on the appeal property indicated a main space price of £315/m^2 and applied moderate weight to this evidence.

19. Mrs Lynch had referred to assessment evidence for five similar outlets in the locality which she submitted supported a main space rate of £315/m^2 for the appeal property. The panel noted that: McDonalds, Walter Tull Way, Northampton, NN5 5QJ was valued at £360/m^2 with 322.22m^2 in terms of main space (ITMS) and it was built in1994; Costa Coffee drive through, Rushden Lakes, Rushden, Northampton, NN10 6FH was valued at £400/m^2 with 183.86 m^2 ITMS; this property was built in 2017; Unit E, Sixfields Retail Park, Gambrel Road, Northampton NN5 5DG, valued at £425/m^2 with 203.28m^{2}ITMS; it was not as prominently positioned as the appeal property and surrounded by competing businesses; Starbucks at Morrisons, Kettering Road, Northampton, NN3 6AA was valued at £395/m^2, with an ITMS of 183.86m^2 it was refurbished in 2020 and is smaller than the appeal property. The panel found that this was good evidence which supported the Valuation Officer's argument that a main space price of £315/m^2 for the appeal property was not unreasonable.

20. The panel found the best evidence to be the Valuation Officer's rental evidence including:

- 102 St James Mill with a rent of £93,650 set at review in 2014 which analysed to £353.64/m^2 with a unit value of £340/m^2;
- McDonalds at 2 Marquee Drive was very similar to the appeal property with a rent of £167,534 which was a lease renewal set September 2015 which analysed to £682.41/m^2 with a unit value of £340/m^2;
- Starbucks at St James Retail Park with a rent of £90,000 set at review in 2016 which analysed to £399.09/m^2 with a unit value of £375/m^2 which sits on a similar estate; and
- McDonalds at Orion Way with a rent of £92.400 set at review in 2017 which analysed to £347.37/m^2 with a unit value of £320/m^2. This property was located on the edge of a retail park close to Tesco and situated on a busy 'A' road the only slight difference was that it was not so visible from the road as the appeal property.

21. The panel found this to be good evidence and attached significant weight to it.

22. The panel turned to the evidence cited by the appellant. He had referred to his main comparable property as being 45 London Road, Wellingborough, Northampton, which had been valued at RV £124,000 at £300/m^2 with an area ITMS of 416.34m^2, this property was built in 2015 with ground floor accommodation. The panel noted that this property is 151m^2 larger than the appeal property in a location on a retail park and surrounded by competing businesses it would therefore be less appealing to the hypothetical tenant than the appeal property. The panel also noted that Mrs Lynch has asserted that the landlord had agreed with the tenant, prior to 2014, to build the property specifically for McDonalds, therefore this transaction did not follow the rating hypothesis as the property had not been let on the open market.

23. The panel also noted that McDonalds, Enstone Court NN8 2DR at £300/m^2 with ITMS of 277.39m^2 built in 1998 with ground floor accommodation is larger and less favourably positioned in terms of volume of passing traffic. It also noted that historically, under a past 2010 list appeal agreement, this property has been agreed at a lower value £/m^2 compared to the appeal property.

24. The panel found the appeal property to be well located situated at the cross point of the A45 and A509, with steady traffic flow. The appeal property appeared to be well positioned and had the benefit of having no immediate competitors in the same type of business. The panel considered that an RV of £82,500 was not unreasonable.

25. The panel found that in cases of this nature the burden of proof is on the appellant to satisfy the Tribunal that the appeal should be allowed. In this case the panel was not persuaded by the evidence and arguments put forward by the appellant's representative that a reduction in the assessment to £290.00/m^2 was warranted. Therefore, the appeal was dismissed.

Date: 17 October 2022

Appeal number: CHG100336910

Right of Appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.